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The Honorable Stanley A. Bastian

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Lead Counsel for Defendants

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

NORTH SAILS GROUP, LLC, a
Delaware limited liability company,

Plaintiff.

V.

BOARDS & MORE, INC., a Washington corporation,

Defendant.

No. 1:19-cv-03112-SAB

**DECLARATION OF
CHRISTOPHER J. GASPAR IN
SUPPORT OF DEFENDANT'S
MOTION FOR ATTORNEYS'
FEES**

DECLARATION OF CHRISTOPHER J.
GASPAR - 1
Case No. 1:19-cv-03112-SAB

Case No. 1:19-cv-05112-SAD
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1 I, CHRISTOPHER J. GASPAR, declares as follows:

2 1. I am over the age of 18. I am the lead attorney of record for
3 Defendants Boards and More GmbH (“B&M Austria”) and Boards & More, Inc.
4 (“B&M USA”) in the above-captioned case. I have personal knowledge of the
5 facts contained in this declaration and if asked to testify regarding the same would
6 and could competently do so.

7 2. I submit this Declaration in support of B&M Austria’s Motion for
8 Attorney Fees under Federal Rule of Civil Procedure 54(d).

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13 ***Representations of B&M Austria***

14 3. This is the third civil action NSG filed against B&M Austria since late
15 2017 and the third action dismissed in B&M Austria’s favor. The actions are
16 briefly summarized as follows:

17 a. First Action: On January 26, 2018, NSG sued B&M Austria and
18 EMERAM Capital Partners GmbH (“EMERAM”) for breach of
19 contract in the U.S. District Court for the District of Connecticut.
20 (Case No. 3:18-cv-00160-CSH). NSG also filed an “emergency
21 motion” for leave to serve B&M Austria and EMERAM by
22 alternative means and a preliminary injunction motion to force B&M
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GASPAR - 2
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1 Austria to continue creating kiteboarding and windsurfing products
2 under NORTH brand names. On February 6, 2018, the Connecticut
3 District Court ordered NSG to promptly submit affidavits so that the
4 court could assess whether it had jurisdiction over the case. On
5 February 8, 2018, NSG dismissed the Connecticut district court
6 action.

7
8 b. Second Action: On February 8, 2018, filed suit in Connecticut state
9 Superior Court (Hartford). (Case No. HHD-CV-18-6092412-S). In
10 its complaint, NSG alleged that B&M Austria and EMERAM
11 violated certain contractual obligations relating to ongoing sales of
12 products bearing NORTH trademarks as a result of B&M Austria's
13 then-intended launch of the Duotone brand. NSG, again, filed an
14 "emergency" motion to serve B&M Austria and EMERAM by
15 alternative means. B&M Austria and EMERAM moved to dismiss
16 NSG's complaint in its entirety for lack of personal jurisdiction and
17 insufficient service of process. On May 1, 2018, the Connecticut
18 Superior Court (Judge Moukawsher) heard argument on B&M
19 Austria and EMERAM's motion to dismiss. On May 23, 2018, the
20 Superior Court granted B&M Austria and EMERAM's motion. On
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DECLARATION OF CHRISTOPHER J.
GASPAR - 3
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June 28, 2018, NSG appealed dismissal of the action against B&M to the Connecticut Appellate Court. (Case No. A.C. 41822).

c. Third Action: On May 24, 2019, NSG filed this action against B&M Austria and B&M USA in the Eastern District of Washington. On September 4, 2019, Defendants filed three motions: (i) a Motion to Dismiss B&M Austria for Lack of Personal Jurisdiction (ECF 14); (ii) a Motion to Dismiss Defendants for Failure to State a Claim (ECF 13); and (iii) a Motion to Stay the Proceedings in view of NSG's previously-filed action in Connecticut state court against B&M Austria and EMERAM Capital Partners GmbH (ECF 15). On November 18, 2019, B&M Austria was dismissed from the case for lack of personal jurisdiction. NSG filed a motion for reconsideration which was denied on January 14, 2020. Final judgment was entered in favor of Defendants on April 1, 2020 (ECF 73).

4. Counsel from Milbank LLP, including myself, Javier J. Ramos (senior associate, admitted in this action *pro hac vice*), and other associates, spent at least 890 billed hours representing Defendants in this action.¹

¹ Copies of Milbank LLP's invoices are not included herewith due to their sensitive and privileged contents and the limited scope of the instant Rule 54(d) Fee Motion.

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GASPAR - 4
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1 5. I am an attorney licensed and admitted to practice in New York, the
2 District of Columbia, and Missouri, as well as before the U.S. Supreme Court, the
3 U.S. Patent and Trademark Office, the U.S. Courts of Appeals for the Federal and
4 Fifth Circuits, and the U.S. District Courts for the Southern and Eastern Districts of
5 New York, District of Colorado, and Western District of Missouri. I have
6 practiced law for over 23 years and I have been a partner in Milbank LLP's
7 Litigation & Arbitration Group since 2011. My practice primarily focuses on high
8 stakes intellectual property-related litigation and transactional work. I am a
9 member of the Intellectual Property Owners Association, the American Intellectual
10 Property Law Association, and the New York Intellectual Property Law
11 Association. I am nationally ranked for intellectual property in Euromoney's
12 *Benchmark Litigation 2020* guide. I also have repeatedly been ranked in the Silver
13 Band as a leading practitioner by *IAM1000*, have been recognized by *Legal 500* in
14 the area of Patent Litigation (Full Coverage), and have been ranked as a "Patent
15 Star" in the *Managing Intellectual Property* IP Star rankings each year since 2015.
16 In addition to Defendants here, I have represented many clients as lead litigation
17 and trial counsel, including, for example, Apple, Aven Therapeutics, Bayer
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25 Should the Court desire to review Milbank LLP's actual invoices, Defendants
26 reserve the right to submit them to the Court *in camera* or under seal.

DECLARATION OF CHRISTOPHER J.
GASPAR - 5
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1 CropScience, Canon, EB Research Partnership, EMERAM Capital Partners,
2 Fujitsu Network Communications, Google, Microsoft, and Take-Two Interactive.
3
4 I have achieved notable results for my clients including, e.g., securing an award in
5 excess of \$456 million (the then-largest known arbitration award involving
6 patents) on behalf of Bayer CropScience in a dispute involving multi-billion-dollar
7 genetic engineering technology.
8

9 6. My standard hourly rates are representative of a New York-based,
10 intellectual property-focused, highly experienced attorney and a partner at Milbank
11 LLP. My standard hourly rates, and the discounted hourly rates billed to and paid
12 by Defendants in this action, are higher than those of local counsel, John R.
13 Nelson, and are not being sought as the lodestar rate, adjusted or otherwise, in
14 connection with the Motion for Fees. Instead, Defendants are requesting a
15 reasonable hourly rate commensurate with local counsel's standard rate of \$680 to
16 be applied to my time accrued in Defending B&M Austria from being haled into
17 this Court.
18

21 7. Attached as Exhibit A is a reproduction of entries from my billing
22 records in this matter that are relevant to the Motion for Fees. The entries set forth
23 true and accurate descriptions of work done to prepare Defendants' defense which
24 specifically relate to B&M Austria's jurisdictional defense, including
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DECLARATION OF CHRISTOPHER J.
GASPAR - 6
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1 apportionment of time recoverable for any particular time entry based on the limited
2 nature of B&M Austria's Fee Motion.

3 8. As noted in Exhibit A, I spent at least 128 hours defending B&M
4 Austria from NSG's improper invocation of personal jurisdiction in Washington.
5 My time can reasonably be organized into the following categories: (i) reviewing
6 NSG's complaint, identifying personal jurisdiction defenses, and drafting Motion
7 to Dismiss for Lack of Personal Jurisdiction (47.05 hours); (ii) reviewing NSG's
8 opposition to the Motion to Dismiss for Lack of Personal Jurisdiction and drafting
9 reply in view of the same (30.85 hours); (iii) reviewing and responding to NSG's
10 two unauthorized "supplemental" briefs (9.3 hours); (iv) preparing for and
11 participating in the in-person hearing in Yakima, Washington (26.9 hours); (v)
12 reviewing NSG's motion for reconsideration and determining not to file a response
13 to the same (0.4 hours); and (vi) reviewing NSG's Motion for a Rule 54(b)
14 Certification and drafting a response to the same (13.5).

15 9. I have reviewed the time detail, as reflected in Exhibit A to this
16 Declaration, on an ongoing basis and again in connection with this Motion. It is
17 my opinion that all of the work performed in this case was reasonable and
18 necessary in order to successfully represent B&M Austria in this action. In my
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DECLARATION OF CHRISTOPHER J.
GASPAR - 7
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1 review of the hours expended, the hours appear to be reasonable and necessary and
2 were integral in presenting a successful defense for B&M Austria.
3

4 10. When applying local counsel's standard hourly rate of \$680 per hour,
5 I believe that the total amount of fees charged \$87,040 is reasonable for a case of
6 this nature and the results achieved. Plaintiff's efforts to subject B&M Austria to
7 the jurisdiction of Washington courts was not supported by the law and ultimately
8 failed.
9

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.
12

13 Executed this 29th day of April 2020 at New York, New York.
14

15 s/ Christopher J. Gaspar
16 Christopher J. Gaspar
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DECLARATION OF CHRISTOPHER J.
GASPAR - 8
Case No. 1:19-cv-03112-SAB

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2020, I electronically filed the foregoing.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

DATED at Spokane, Washington, this 29th day of April 2020.

s/Julia Robertson

Julia Robertson

Legal Assistant

DECLARATION OF CHRISTOPHER J.
GASPAR - 9

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